GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Tribal Welfare Department – Appeal Petition filed by Sri Bandili Vinay, S/o B.R. Prabhakara Rao, Occ: Student, R/o H.No.70-6-10/1, Behind Boat Club, Ramanayyapet, Kakinada, East Godavari District, under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) - Regulation of Issue of Community Certificates Act, 1993 (AP Act No.16/1993) against the Proceedings, in Rc.No.C5/M/603/2012, dtd: 06.12.2013 of the District Collector, East Godavari – Appeal Petition allowed – Orders - Issued.

SOCIAL WELFARE (TW.CV.2) DEPARTMENT

G.O.Ms.No.1 Dated: 01.01.2021
Read the following:-

1. Proceedings of District Collector, East Godavari, Ref.C5/M/603/2012, dt.6.12.2013.
2. Appeal Petition filed by Sri Bandili Vinay, S/o B.R.Prabhakara Rao, Occ:Student, R/o H.No.70-6-10/1, Behind Boat Club, Ramanayyapet, Kakinada, East Godavari District before M (TW), No.52/M (TW)/2014, dt.31.01.2014.
3. Govt. Memo No.1539/CV.2/2014, dt: 12.02.2014.
4. From the Collector East Godavari, Lr.Rc.C5/M/603/12, Dt:16.07.2018.
5. Govt. Memo No.1539/CV.2/2014, dt: 09.10.2019, 10.09.2020 & 16.11.2020.

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ORDER:

In the Proceedings 1st read above, the District Collector, East Godavari has issued orders cancelling the ST-Valmiki community certificate obtained from the Tahsildar, Maredumilli, East Godavari District by Sri Bandili Vinay S/o B.R. Prabhakara Rao, Kakinada, East Godavari District and declared the caste of Sri Bandili Vinay as Mala (SC).

2. Sri Bandili Vinay, S/o B.R. Prabhakara Rao has filed Appeal Petition before the Government against the Proceedings of the District Collector, East Godavari. After examining the said Appeal Petition, Government have admitted the same and granted stay on the proceedings of the District Collector, East Godavari as prayed by the Appellant, and Para-wise remarks on the grounds filed by the Appellant along with connected records were called for from the District Collector in Memo 3rd read above.

3. In the letter 4th read above, the District Collector, East Godavari has furnished para-wise remarks along with connected records on the Appeal Petition filed by Sri Bandili Vinay S/o B.R. Prabhakara Rao.

4. The said Appeal Petition has been posted for hearing finally on 28.11.2020 before the Hon'ble Appellate Authority duly informing the same to the Appellant and the Counsel for the Appellant in the reference 5th read above. The appellant and his counsel have attended the hearing on 28.11.2020. During the course of the hearing and on perusal of the records/ the copies of evidences/ academic record/ grounds filed by the Appellant/ the para-wise remarks submitted by the District Collector, East Godavari and proceedings of the District Collector, East Godavari, dated 6.12.2013, the Appellate authority has observed that;

I. The grounds put-forth by the appellant in support his claim of ST-Valmiki community is as follows:

1. The very recognition of a society and its members accepting the appellant as Valmiki is sufficient to declare him as Valmiki in view of the Judgment of the Hon'ble Court wherein the Hon'ble Court, has held that if an individual has suffered all the infirmities of a Tribal since his birth and was recognized so and if the families/ Tribals have accepted him to have belonged to Tribal Community. Then that individual shall be deemed to be a Tribal.

[Contd..on P.2]

2. The District Collector has not denied the residence of the fore fathers of the appellant as belonging to Chatlawada Village of Maredumilli Mandal, East District, which is an agency area. The Respondent has failed to consider the statements of the Village elders in accepting the appellant father and the appellant as belonging to Vaimiki (ST) Community for the reasons best known to him, disputes that the said document without any basis.
3. The respondent, if disputed the statements and the depositions of the Grama Panchayat, the respondent ought to have called for a report from the concerned authority and should have sent the same for expert opinion. The mere opinion of the respondent cannot be a ground to disbelieve the statements and depositions.
4. The respondents have failed to consider the date of birth/ community certificate issued on 28.12.2004 as per G.O.Ms.No.371, dated 13.04.1976 and not made correct interpretation of the guidelines issued in the said GO and passed an order contrary to the same.
5. The respondent has failed to appreciate that the caste Certificate was issued on 28.12.2004, wherein, the G.O.Ms.No.92, dated 03.10.2007 was issued much subsequent to the issuance of the Caste Certificate and that no fraud is played by the appellant to obtain the Caste Certificate as alleged by the respondent and further the educational certificates of the appellant also, wherein from the beginning of his Academic career, the Caste of the appellant is mentioned as Valmiki (ST).
6. The respondent wrongly arrived to the conclusion and opined the caste of the appellant as MALA stating that the certificate seeker should establish his/her community on the basis of documentary evidence. However, the respondent has failed to consider the statements adduced in the Grama Sabha and during the enquiry conducted by him and has arrived to erroneous conclusion. Contrary to the enquiry conducted earlier at the time of issuance of certificate in 2004.

II. The District Collector, East Godavari has furnished the following remarks on the above grounds as follows:

1. The Sub-Collector, Rampachodavaram, has enquired into the matter and reported that the candidate depositions and other available evidence conclusively proves that the candidate father belongs to MALA community and he never resided in Agency tract and his entire education was happened outside the agency area.
2. The candidate father deposed before the Collector that he belong to SC-Mala community and native of Komaragiri Village of U. Kothapalli Mandal. Bandili is not found any of the entries i.e, Birth and death registers. Sri Bandili Vinay was born in 1994 and since his birth he neither resided nor attended school in agency areas. Since childhood Sri Bandili Vinay studied from 1st to till date at Kakinada which is plain area.
3. The Hon'ble Supreme court held in Anjakumar Vs. Union of India in Civil Appeal No.6445 of 2000 decided on February, 2000 held "citing Punit Raj case in Para-27, observed that the caste system in India is ingrained in the Indian mind. A person in the absence of any statutory law would inherit his caste from his father and not his mother even in a case of inter-caste marriage.
4. The Government vide G.O.Ms.No.91, dt: 03.10.2007 ordered that the para-2 of G.O.Ms.No.371, E & SW (B2) Dept., dt:13.01.1976 "for the purpose of admissions into educational institutions and professional colleges, however, the Government direct the lower caste of either parent in the inter-caste marriage shall be the caste of the marriage shall be the caste of the child and it shall be eligible for the reservation of the seats made for that caste" is deleted with immediate effect. Hence, the certificate obtained under the guide G.O.Ms.No.371, dt:13.01.1976 does not hold good and is to be cancelled.
5. The G.O.Ms.No.91, dt:03.10.2007 is related to sanction of certain incentives and non-statutory education concessions like scholarships, hostel facilities free concessions etc only. Further, the respondent father has deposed that his son studied from 1st class to till date at Kakinada and which is plain area.

[Contd..on P.3]

6. After conducting detailed enquiry at field level and examining the recorded evidences produced by the appellants in light of orders and instructions issued by the Government from time to time, the ST-Valmiki caste certificate of the appellant was cancelled.

III. The Appellate Authority has opined that;

1. During the course of hearing, the appellant submitted his arguments and also filed written arguments stating that the mother of the appellant belongs to Valmiki ST and father of the appellant belongs to Mala SC and the marriage taken place at Agency area as per the customs and traditions of the Valmiki community and the ST community accepted the appellant as the appellant born in agency area and for the purpose of employment of parents of appellant resided in plain area and from date of joining into school, the appellant was admitted as Valmiki ST community and the birth record educational records established that he belongs to Valmiki ST community and request to set aside the order of the lower authority.
2. On verification of the written arguments and the documents and the grounds of appeal and Para wise remarks as well as the other documents and material available on the record it is noticed that admittedly the mother of the appellant belongs to ST-Valmiki Community and married a man from Mala SC Community and by virtue of their employment they shifted to plain area.
3. The appellant is the son of the tribal mother and non tribal father and the circumstances of living the family at plain area is that they being employees only as such the social status of the appellant can be taken as tribal community basing on the community of the mother of the appellant in view of marriage performed as per the traditions of Valmiki community and the acceptance of appellant by the ST community basing of statements of the persons at Grama Sabha.
4. It is further brought to the notice as per the guidelines prevailing that the child should be born and brought up in the community fold for which they are claiming for reservation and the children of inter caste and inter religion married couple cannot automatically claim socially the claim of his parent and they shall be accepted by the community in which they are claiming. In the instant case the mother of the claimant belongs to Schedule Tribe Community admittedly and whereas the father belongs to SC community and whereas the appellant brought up as ST community as per the record available since his childhood in the said community and further the school records also shows that he brought up as Valmiki ST Community.
5. As seen from the totality of the case it indicates admittedly that the appellant born and brought up in the community fold for which he is claiming, it is further observed as per the record that the mother of the appellant is the Schedule Tribe Community and the appellant is accepted by the Community of his mother and bought up as ST community as such the appellant shall be treated as Schedule Tribe Community. The M.R.O., issued caste certificate vide D.Dis/C/203/2014, dated: 28-12-2004 after following the due procedure of conducting a detailed enquiry.
6. The legal position that seems to emerge is that in an inter-caste marriage or a marriage between a tribal and a non-tribal the determination of the caste of the offspring is essentially a question of fact to be decided on the basis of the facts adduced in each case. The determination of caste of a person born of an inter-caste marriage or a marriage between a tribal and a non-tribal cannot be determined in complete disregard of attendant facts of the case. In an inter-caste marriage or a marriage between a tribal and a non-tribal there may be a presumption that the child has the caste of the father. This presumption may be stronger in the case where in the inter-caste marriage or a marriage between a tribal and a non-tribal the husband belongs to non-tribal. But by no means the presumption is conclusive or irrebuttable and it is open to the child of such marriage to lead evidence to show that he was brought up by the mother who belongs to the scheduled tribe. By virtue of being the son of a non-tribal father he did not have any advantageous start in life but on the contrary suffered the deprivations, indignities,

[Contd..on P.4]

humilities and handicaps like any other member of the community to which his mother belonged. Additionally, that he was always treated a member of the community to which her mother belonged not only by that community but by people outside the community as well.

7. That as per the Act that the burden of proving a person claims particular caste shall be on his shoulder and it is his responsibility to produce necessary evidence and documents to prove his claim and in the present case that the said individual discharged his burden by producing relevant admissible evidence before the competent authority.
8. That taking consideration of the above and the material available on the record, it can be concluded that the lower authority failed to observe the finding of the concerned above, hence the proceeding in Ref/C5/M/603/2012 dated 06-12-2013 of the District Collector, Kakinada, East Godavari District is to be Set-aside duly upholding the ST-Valmiki community certificate issued to the appellant by the M.R.O. on 28-12-2004.

5. Government after careful examination of the appeal petition and the circumstances stated supra and in exercise of the powers conferred under Section 7(2) of A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993), and rules made there under, hereby allow the appeal petition filed by Sri Bandili Vinay S/o B.R. Prabhakara Rao, Kakinada, East Godavari District and the proceeding in Ref/C5/M/603/2012, dated 06-12-2013 of the District Collector, East Godavari District is hereby set-aside duly upholding the ST-Valmiki community certificate issued by the M.R.O. on 28-12-2004.

6. The District Collector, East Godavari is directed to take necessary consequential action in the matter, accordingly.

7. The records (Ref:C5/M/603/2012, containing pages CF: 1 to 540, NF: 1-19) received from the District Collector, East Godavari through in the reference 4th read above, are returned herewith in original to the District Collector, East Godavari and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

KANTILAL DANDE
SECRETARY TO GOVERNMENT

To
The District Collector, East Godavari.(we)
(With original records) (by RPAD)

Sri Bandili Vinay, S/o B.R. Prabhakara Rao,
Occ: Student, R/o H.No.70-6-10/1,
Behind Boat Club, Ramanayyapet, Kakinada,
East Godavari District.

Mr. G.R. Sudhakar, Advocate,
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Secunderabad-500017.
Ph:9849175958.

Copy to:
The PS to Hon'ble Deputy CM(TW).
The PS to Secretary(TW).

// FORWARDED:: BY ORDER //

SECTION OFFICER